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10/597,024	07/07/2006	John Montanti	51900-MONTANTI-004	4984
34325	7590	04/29/2010	EXAMINER	
STANLEY H. KREMEN			YIP, WINNIE S	
4 LENAPE LANE			ART UNIT	
EAST BRUNSWICK, NJ 08816			PAPER NUMBER	
			3636	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/597,024	Applicant(s) MONTANTI, JOHN	
	Examiner WINNIE YIP	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,9,12-20,23-25,32,34-39 and 42 is/are pending in the application.
- 4a) Of the above claim(s) 9,18,32,34 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,12-17,19,20,23-25,35-38 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to applicant's amendment filed on December 23, 2009.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 9, 18, 23, 32, 34 and 39 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim.

Drawings

1. The drawings were received on December 23, 2009. These drawings are approved and placed on the record.
2. The drawings are still objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following features "the lower padded straight element is pivotally connected to the upper padded element so that it may move angularly at its pivot, ranging from a direction al said supporting means to a direction essentially perpendicular to said support means" ... " it becomes locked into that position" (claim 1); and "... using a pivot mechanism ... it becomes locked into that position" (claim 15), "a locking mechanism" (claims 37 and 42) must be shown or the feature(s) canceled from the claim(s).

In this case, the numerical number 19 appears to indicate "a lower padded straight element" but does not deemed to be "a locking ratchet mechanism" that can lock the lower padded straight element in an angularly position or essentially perpendicular to the shaft as claimed. The drawings do not show which element provides "a pivot mechanism" (by

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numerical number such as a pivot pin?) and what element provides "a locking mechanism" as claimed. **No new matter should be entered.**

3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claims 12 and 21 are objected to because they depend upon cancelled claims 10 and 21 respectively. Appropriate correction is required.

Claims 12 and 21 have been treated on the merits as depending upon claims 1 and 15 respectively.

Claim Rejections - 35 USC § 112

5. Claims 1-5, 12-14, 24, 35-38, and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 6 and 21-37 (sections iii-vi), the term "the/said supporting means" lacks a consistency with the term "means for supporting". So it should read "the/said means for

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supporting". Further, "said supporting means has length" is confusing since "said means for supporting" merely recites a means plugs function but not an element. So, it appears to read "wherein the means for supporting includes an elongate member having a length".

In claim 1, further, line 15, the language "a means for mounting with at least two mounting points" fails to define "means for mounting" what element to what location such that it would cause the claims vague and indefinite. It appears to read "a means for mounting said rigid bracket means to the means for supporting with at least two mounting points".

In claims 13-14, the terms "the/said supporting means" lacks a consistency with the term "means for supporting". So it should read "the/said means for supporting" (or "the elongate element" as corresponding changes of claim 1).

In claim 24, "the protrusion" lacks a proper antecedent basis.

In claim 38, it is confusing whether or not the element "a mounting bracket" is different than "a rigid bracket" as previously defined in claim 37. Clarification is required.

In claims 37 and 42, the Claims are incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: an operative connection between elements "two rigid padded straight elements" of "a resting device" and the "rigid bracket" since applicant do not claim a "KIT". For example, the right upper padded straight element is connected to the rigid bracket.

In claim 37, the language "having resilient padding" does not proper. It appears to read "each having a resilient padding".

Claim Rejections - 35 USC § 102

6. Claims 37-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Chander et al. (US Patent No. 5,456,437).

Chander et al. teach a calf, ankle, foot, or leg resting device that is capably being mounted on a cane shaft, said device comprising: a) a rigid mounting bracket (10) having a mounting portion with at least two mounting points (6) and a resting portion (upper portion of element 3); the at least two mounting points is formed by two clamps (6) for adjusting a position of the device on the cane shaft; b) two rigid padded straight elements (1, 3) each having a resilient padding (8,7); c) a pivoting mechanism including hinge walls (2, 4) being locked by a locking mechanism such as a locking pin (5); wherein: i) the two rigid padded straight elements (1, 3) are pivotally connected at a pivot point (5) within the pivoting mechanism such that one of the rigid padded straight elements (1) can pivot angularly around the pivot point at angles ranged from 90 to 180 degrees by tightening the pin (5) with respect to another rigid padded straight element (3); ii) the two rigid straight elements can be locked into position by the locking mechanism when they are essentially perpendicular (see Fig. 1.) (by tightening the pin) to each other until they are manually unlocked (by losing the pin). Wherein the device is capably mounted on a cane in a position (such as reversibly mounted on) for resting the person's calf, ankle, foot or leg thereon as claimed invention. (Notice, "a cane" in these claims is merely an introductory statement for intended use and is given very little patentability weight; in article claims, the invention must be described in terms of structure and not those of intended use. In re Dense, 70 USPQ 212).

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7. Claims 37-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Jambers (US Patent No. 0266,630).

Jambers teaches a resting device (A) that is capably being mounted on a cane for supporting a person's calf, ankle, foot or leg, said device comprising: a) a rigid mounting bracket (C) having a mounting portion (upper parts) with at least two mounting points (f) and a resting portion (upper edges); the at least two mounting points is formed by two hinges (f) for adjusting a position of the device on the cane shaft; b) two rigid padded straight elements (A, B) each having a resilient padding (a curved surface on top of the elements); c) a pivoting mechanism including hinges (f, g) being locked by a locking mechanism such as a locking bolt (F); wherein: i) the two rigid padded straight elements (A, B) are pivotally connected by pivot points (g, f) within the pivoting mechanism such that one of the rigid padded straight elements can pivot angularly around the pivot point at angles ranged from 90 (see Fig. 2) to 180 (see Fig. 4) degrees by tightening the bolt (F); ii) the two rigid straight elements can be locked into position by the locking mechanism when they are essentially perpendicular (see Fig. 2) to each other until they are manually unlocked (by losing the blot). Wherein the device is capably mounted on a cane in a position for resting the person's calf, ankle, foot or leg thereon as claimed invention. (Notice, "a cane" in these claims is merely an introductory statement for intended use and is given very little patentability weight; in article claims, the invention must be described in terms of structure and not those of intended use. In re Dense, 70 USPQ 212).

8. Claims 37-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Sedorcek et al. (US Patent No. 5,462,334).

Sedorcek et al. teach a resting device (10) that is capably being mounted on a device such as a cane for supporting a person's calf, ankle, foot or leg, said device comprising: a) a rigid mounting bracket (50) having a mounting portion (54) with at least two mounting points (60, 62) and a resting portion (58); b) two rigid padded straight elements (26, 12) each having a resilient padding (34, 20) respectively; c) a pivoting mechanism including hinges (40) being locked by a locking mechanism; wherein: i) the two rigid padded straight elements (26, 12) are pivotally connected by pivot points (42, 44, 46) within the pivoting mechanism such that one of the rigid padded straight elements (26) can pivot angularly around the pivot point at angles ranged from 90 (see Fig. 2) to 180 degrees; ii) the two rigid straight elements can be locked into position by the locking mechanism when they are essentially perpendicular (see Fig. 2) to each other until they are manually unlocked. Wherein the device is capably mounted on a cane in a position for resting the person's calf, ankle, foot or leg thereon as claimed invention. (Notice, "a cane" in these claims is merely an introductory statement for intended use and is given very little patentability weight; in article claims, the invention must be described in terms of structure and not those of intended use. In re Dense, 70 USPQ 212).

Allowable Subject Matter

9. Claims 1-5, 9, 12-14, 24, 35-36, and 42 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, and the objection to the Drawings set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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10. Claims 15-17, 19-20, and 25 would be allowable if the corresponding drawing objection is overcome without effecting changing of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Graves '305, Cadman '148, Jones '486 and Buche '385 teach various canes or walking sticks comprising a resting device providing means for propping a person's calf, ankle, foot or leg while seated, the resting device comprising padded straight elements being angularly perpendicular to each other, and one of padded straight element being mounted to a supporting shaft with at least two mounting points as similar to the claimed invention. Hansare '915 teaches a device mounted to a shaft and the device comprising straight elements pivotally connected one to another by pivot mechanism and locking mechanism as similar to the claimed invention.

Response to Arguments

12. Applicant's arguments with respect to claims 1-39 have been considered but are moot in view of the new ground(s) of rejection.

ACTION IS MADE FINAL

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Inquiry Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Winnie Yip/
Primary Examiner,
Art Unit 3636

wy
April 23, 2010